

PT 97-37  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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NEW ATHENS HOME FOR	)		
THE AGED, INC.	)	Docket #	94-82-395
Applicant	)		
	)	Parcel Index #	18-28-0-438-011 TR
v.	)		
	)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

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RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at 1100 Eastport Plaza Drive, Collinsville, Illinois on April 11, 1997, to determine whether or not St. Clair County parcel numbered 18-28-0-438-011 TR qualified for exemption during the 1994 assessment year.

Gary W. Holtgrewe, Administrator of the New Athens Home for the Aged, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 1994 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for exempt purposes during the 1994 assessment year.

Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel in question in 1994. It is also determined that the applicant is a charitable organization. Finally, it is

determined that the applicant did not use the parcel in an exempt manner during the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department, that St. Clair County Parcel Index No. 18-28-0-438-011 TR does not qualify for a property tax exemption for the 1994 assessment year, was established by the admission into evidence of Department's Exhibit Nos. 1 through 7.

2. The applicant was incorporated under the General Not for Profit Corporation Act of Illinois on November 25, 1987. (Applicant's Ex. No. 6)

3. The purposes of the applicant are "to administer, own and operate a nursing home, home for the aged and retirement center for the elderly in a [c]hristian sic atmosphere as affiliated with the United Church of Christ." (Applicant's Ex. No. 6)

4. The applicant acquired the property at issue by a warranty deed, dated April 28, 1988. (Dept. Ex. No. 1)

5. The property at issue contains a 4200 square foot one-story building that houses a group of six retirement apartments. The building is located to the rear of the New Athens Home for the Aged. (Dept. Ex. No. 1)

6. New Athens Home for the Aged is a 64 bed nursing home that was granted an exemption from property taxation by the Department pursuant to Docket No. 89-82-19.

7. Spouses of residents living in the nursing home have priority to rent the independent living units at issue. The units rent for \$400.00 per month with a \$400.00 security deposit required before the tenant moves in. (Dept. Ex. No. 1; Tr. pp. 16, 23-24)

8. The \$400.00 per-month rent is a reasonable amount to charge for an apartment in the area. (Tr. p. 16)

9. The applicant has no provision for a waiver of fees if someone is unable to pay the remunerations required for the apartments. (Dept. Ex. No. 1; Tr. pp. 11, 24)

10. The rental units are built with the senior citizen in mind. The units are wheelchair accessible with amenities for the disabled. Daily meals can be purchased for \$3.00 per serving. (Dept. Ex. No. 1; Tr. p. 16)

11. The applicant offers additional services to the persons that rent the apartments, including wellness calls at least twice a week, ordering food for them, and assistance if they need nursing care. (Tr. p. 16)

12. The applicant is affiliated with the United Church of Christ and the Illinois South Conference of the United Church of Christ. Both entities are exempt from the payment of Federal Income Tax pursuant to 501(c)(3) designations from the Internal Revenue Service. (Applicant's Ex. Nos. 2, 3; Tr. pp. 17-18)

13. The applicant received a bequest from "one of the apartment folks that donated the property" and with that money, built the apartments. (Tr. p. 19)

14. The applicant could have put the bequest into a certificate of deposit (CD) and asserted they would have earned the same amount of interest income as the amount of income earned by the rental of the apartments. (Applicant's Ex. Nos. 4, 5; Tr. pp. 19-20)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;. . .

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code. . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services . . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941) Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to Docket No. 89-82-19, the Department granted an exemption to the applicant, finding that the nursing home adjacent to the subject property was exempt from payment of property tax. I take administrative notice of that fact and find that the applicant is a charitable organization. However, that fact does not establish that the parcel herein issue was used for charitable purposes during the 1994 assessment year.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization and its use of the property is charitable. Those six guidelines are as follows:

(1) The benefits derived are for an indefinite number of persons;

- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

In the instant case, I find that the applicant owned the parcel in issue during the entire calendar year, 1994. During that year, the benefits of residing in applicant's facility were limited to persons able to make the pre-payment of applicant's security deposit and payment of the rent. The applicant had no capital, capital stock, or shareholders.

The applicant has failed to establish that they do not profit from the enterprise. Rather, their assertion was that they made an amount equal to what they would have earned had they placed the funds used to build the apartment compound at issue in a CD rather than building the complex at issue. Interest income versus rental income is not the criteria for a charitable exemption under Illinois law.

Regarding the criteria established in Methodist Old Peoples Home, I also find that the applicant did not offer any evidence that all who needed or applied for charity received it. During 1994, applicant required a deposit of one month's rent for the particular type of unit involved before a resident was allowed to move in, and no evidence was offered, either that said provision was ever waived, or was required to be waived in cases of need. I find that applicant did not meet any of the guidelines established in Methodist Old Peoples Home.

Regarding the statutory language at issue, I also find that the applicant has failed to establish that they have a 501(c)(3) designation from the Internal Revenue Service and that they were exempt from payment of federal income tax.

There was no evidence offered that applicant was required by its bylaws to dispense charity to all who needed or applied for it.

Based upon the foregoing, I recommend that St. Clair County Parcel Index No. 18-28-0-438-011 TR remain on the tax rolls for the 1994 assessment year.

Respectfully Submitted;

Barbara S. Rowe  
Administrative Law Judge  
July 7, 1997